



Federal Communications Commission  
Washington, D.C. 20554

May 3, 2012

DA 12-699

James Edwin Whedbee  
5816 NE Buttonwood Tree Lane  
Gladstone, MO 64119-2236

Dear Mr. Whedbee:

This letter responds to your petition<sup>1</sup> for a declaratory ruling that private codes, covenants, and restrictions including homeowner association rules (CC&Rs) that restrict amateur radio facilities violate Section 310(d) of the Communications Act of 1934, as amended.<sup>2</sup> You request that the Commission declare such CC&Rs to be contrary to the public safety and interest, thereby terminating their enforceability.<sup>3</sup> For the reasons set forth below, we deny the petition.

In the *PRB-1* decision, the Commission established a policy of limited preemption of state and local regulations governing amateur station facilities, including antennas and support structures, but expressly decided not to extend its limited preemption policy to CC&Rs.<sup>4</sup> In 2001, the Commission reaffirmed its decision not to preempt CC&Rs for amateur radio operators,<sup>5</sup> but added that it would do so should Congress see fit to enact a statutory directive mandating the expansion of its limited preemption policy to include more than state and local regulations.<sup>6</sup>

Congress recently enacted the Middle Class Tax Relief and Job Creation Act of 2012, which requires the Commission to report to Congress regarding the uses and capabilities of Amateur Radio Service communications in emergencies and disaster relief.<sup>7</sup> The statute requires that the study identify impediments to enhanced Amateur Radio Service communications and recommendations regarding the removal of such impediments, including "the effects of

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<sup>1</sup> Petition for Declaratory Ruling, or in the Alternative, Informal Request for Commission Action Terminating Controversy (filed April 21, 2012) (Petition).

<sup>2</sup> 47 U.S.C. § 310(d).

<sup>3</sup> Petition at 1.

<sup>4</sup> See Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, *Memorandum Opinion and Order*, PRB-1, 101 F.C.C. 2d 952, 960 n.6 (1985).

<sup>5</sup> Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antenna and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service, *Memorandum Opinion and Order*, 17 FCC Rcd 333, 337 ¶ 9 (2001) (*MO&O*), *recon. dismissed*, 17 FCC Rcd 19408 (WTB PSPWD 2002); see also Don Schellhardt, *Letter*, 22 FCC Rcd 4025, 4026 (denied a petition requesting that the Commission override CC&Rs in certain circumstances, concluding that the petitioner had not presented grounds for the Commission to revisit its *PRB-1* policy), *aff'd*, *Letter*, 22 FCC Rcd 13511 (WTB MD 2007).

<sup>6</sup> See *MO&O*, 17 FCC Rcd at 336 ¶ 8.

<sup>7</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6414 (2012).

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unreasonable or unnecessary private land use restrictions on residential antenna installations.”<sup>8</sup> On April 2, 2012, the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau issued a *Public Notice* seeking comments relating to the topics of the study to be submitted to Congress.<sup>9</sup> Comments are due May 17, 2012.

In your petition, you argue that early comments to the *Public Notice* demonstrate a controversy regarding whether CC&Rs that restrict amateur radio facilities violate the Communications Act,<sup>10</sup> and you request a declaratory ruling terminating the controversy by holding that such CC&Rs are unenforceable.<sup>11</sup> Section 1.2 of the Commission’s Rules provides that the Commission may “issue a declaratory ruling terminating a controversy or removing uncertainty.”<sup>12</sup> The Commission’s policy regarding preemption of CC&Rs that restrict amateur radio facilities is clear, and has not changed since 1985. The recent congressional directive to conduct a study that, *inter alia*, examines the effects of such CC&Rs does not change the Commission’s existing policy. Because there is no controversy to terminate or uncertainty to remove regarding the enforceability of CC&Rs, we deny your petition.<sup>13</sup>

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.401(e) of the Commission’s Rules, 47 C.F.R. § 1.401(e), the Petition for Declaratory Ruling, or in the Alternative, Informal Request for Commission Action Terminating Controversy filed April 21, 2012 by James Edwin Whedbee IS DENIED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>8</sup> *Id.* at § 6414(b)(2).

<sup>9</sup> See Commission Seeks Comment on Emergency Communications by Amateur Radio and Impediments to Amateur Radio Communications, *Public Notice*, DA 12-523 (WTB/PSHSB rel. Apr. 2, 2012).

<sup>10</sup> See Petition at 2-3.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> 47 C.F.R. § 1.2(a).

<sup>13</sup> See, e.g., Shaw Communications, Inc., *Memorandum Opinion and Order*, 24 FCC Rcd 5852, 5855 ¶ 11 (2009).